



Reprinted
February 18, 2003

SENATE BILL No. 331

DIGEST OF SB 331 (Updated February 17, 2003 2:47 PM - DI 107)

Citations Affected: IC 12-15.

Synopsis: Medicaid lien recovery. Removes a provision that prohibits the office of Medicaid policy and planning from: (1) obtaining a lien against a person lawfully residing in the home of a Medicaid recipient who provides care to the recipient in the home; and (2) enforcing a lien if the Medicaid recipient is survived by a family member. Automatically terminates a lien if the office does not commence foreclosure within seven years after the Medicaid recipient's death. Removes the lien exemption. Repeals the portion of the Medicaid law that provides for subordination of the lien to the security interest of a financial institution that lends money for certain purposes; however, provides that a Medicaid lien is subordinate to the security interest of a financial institution that loans money to be used as operating capital for the operation of a farm, a business, or as income producing real property. Adds a provision that details when a Medicaid lien is void.

Effective: July 1, 2003.

Miller, Broden, Dillon, Kenley

January 15, 2003, read first time and referred to Committee on Judiciary.
February 13, 2003, amended, reported favorably — Do Pass.
February 17, 2003, read second time, amended, ordered engrossed.

SB 331—LS 7531/DI 104+



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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 331

A BILL FOR AN ACT to amend the Indiana Code concerning
Medicaid.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 12-15-8.5-2, AS ADDED BY P.L.178-2002,
2 SECTION 81, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]: Sec. 2. **(a)** Subject to section 10 of this chapter, when
4 the office, in accordance with 42 U.S.C. 1396p, determines that a
5 Medicaid recipient who resides in a medical institution cannot
6 reasonably be expected to be discharged from a medical institution and
7 return home, the office may obtain a lien on the Medicaid recipient's
8 real property for the cost of all Medicaid expenditures made on behalf
9 of the recipient.
10 **(b) The office shall conduct a look back (as described in 42**
11 **U.S.C. 1396p(c)) of a Medicaid recipient's property of at least three**
12 **(3) years.**
13 **(c) A lien obtained under this chapter is subordinate to the**
14 **security interest of a financial institution that loans money to be**
15 **used as operating capital for the operation of a farm, a business, or**
16 **income producing real property.**
17 SECTION 2. IC 12-15-8.5-3, AS ADDED BY P.L.178-2002,

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SECTION 81, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. The office may not obtain a lien under this chapter if any of the following persons lawfully reside in the home of the Medicaid recipient who resides in the medical institution:

- (1) The Medicaid recipient's spouse.
- (2) The Medicaid recipient's child who is:
 - (A) less than twenty-one (21) years of age; or
 - (B) disabled as defined by the federal Supplemental Security Income program.
- (3) The Medicaid recipient's sibling who has an ownership interest in the home and who has lived in the home continuously beginning at least twelve (12) months before the recipient was admitted to the medical institution.
- (4) The Medicaid recipient's parent.
- ~~(5) An individual, other than a paid caregiver, who:~~
 - ~~(A) was continuously residing in the recipient's home for a period of at least two (2) years immediately prior to the date of the recipient's admission to the nursing facility; and~~
 - ~~(B) establishes to the satisfaction of the office that the person provided care to the recipient enabling the recipient to reside in the recipient's home rather than in a medical institution.~~

SECTION 3. IC 12-15-8.5-6, AS ADDED BY P.L.178-2002, SECTION 81, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) Beginning on the date on which a notice of lien is recorded in the office of the county recorder under section 5 of this chapter, the notice of lien:

- (1) constitutes due notice of a lien against the Medicaid recipient's real property for any amount then recoverable and any amount that becomes recoverable under this article; and
 - (2) gives a specific lien in favor of the office on the Medicaid recipient's interest in the real property.
- (b) The lien continues from the date of filing the lien until the lien:
- (1) is satisfied; **or**
 - (2) is released. **or**
 - ~~(3) expires.~~

SECTION 4. IC 12-15-8.5-7, AS ADDED BY P.L.178-2002, SECTION 81, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. The office may bring proceedings in foreclosure on a lien arising under this chapter:

- (1) during the lifetime of the Medicaid recipient if the Medicaid recipient or a person acting on behalf of the Medicaid recipient sells the property; or



(2) upon the death of the Medicaid recipient.

The lien automatically expires unless the office commences a foreclosure action not later than ~~nine (9) months~~ **seven (7) years** after the Medicaid recipient's death.

SECTION 5. IC 12-15-8.5-8, AS ADDED BY P.L.178-2002, SECTION 81, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. ~~(a) The office may not enforce a lien under this chapter if the Medicaid recipient is survived by any of the following:~~

~~(1) The recipient's spouse;~~

~~(2) The recipient's child who is:~~

~~(A) less than twenty-one (21) years of age; or~~

~~(B) disabled as defined by the federal Supplemental Security Income program;~~

~~(3) The recipient's parent;~~

~~(b)~~ The office may not enforce a lien **against a Medicaid recipient's home** under this chapter as long as any of the following individuals reside in the home:

(1) The recipient's child of any age if the child:

(A) resided in the home for at least twenty-four (24) months before the Medicaid recipient was admitted to the medical institution;

(B) provided care to the Medicaid recipient that delayed the Medicaid recipient's admission to the medical institution; and

(C) has resided in the home on a continuous basis since the date of the individual's admission to the medical institution.

(2) The Medicaid recipient's sibling who has an ownership interest in the home and who has lived in the home continuously beginning at least twelve (12) months before the Medicaid recipient was admitted to the medical institution.

SECTION 6. IC 12-15-8.5-9, AS ADDED BY P.L.178-2002, SECTION 81, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) The office shall release a lien imposed under this chapter within ten (10) business days after the county office of family and children receives notice that the Medicaid recipient:

(1) is no longer living in the medical institution; and

(2) **is living in the has returned home to live.**

(b) The county recorder shall waive the filing fee for the filing of a release made under this section.

(c) If the property subject to the lien is sold, the office shall release its lien at the closing, and the lien shall attach to the net proceeds of the sale.

SECTION 7. IC 12-15-8.5-12 IS ADDED TO THE INDIANA



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CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2003]: **Sec. 12. (a) A lien under this chapter is void if both of the following occur:**

(1) The owner of property subject to a lien under this chapter or any person or corporation having an interest in the property, including a mortgagee or a lienholder, provides written notice to the office to file an action to foreclose the lien.

(2) The office fails to file an action to foreclose the lien in the county where the property is located not later than thirty (30) days after receiving the notice.

However, this section does not prevent the claim from being collected as other claims are collected by law.

(b) A person who gives notice under subsection (a)(1) by registered or certified mail to the office at the address given in the recorded statement and notice of intention to hold a lien may file an affidavit of service of the notice to file an action to foreclose the lien with the recorder of the county in which the property is located. The affidavit must state the following:

(1) The facts of the notice.

(2) That more than thirty (30) days have passed since the notice was received by the office.

(3) That no action for foreclosure of the lien is pending.

(4) That no unsatisfied judgment has been rendered on the lien.

(c) The recorder shall:

(1) record the affidavit of service in the miscellaneous record book of the recorder's office; and

(2) certify on the face of the record any lien that is fully released.

When the recorder records the affidavit and certifies the record under this subsection, the real estate described in the lien is released from the lien.

SECTION 8. IC 12-15-9-0.5, AS AMENDED BY P.L.178-2002, SECTION 82, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 0.5. (a)** As used in this chapter, "estate" includes:

(1) all real and personal property and other assets included within an individual's probate estate;

(2) any interest in real property owned by the individual at the time of death that was conveyed to the individual's survivor through joint tenancy with right of survivorship, if the joint tenancy was created after June 30, 2002; and



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(3) any real or personal property conveyed through a nonprobate transfer.

(b) As used in this chapter, "nonprobate transfer" means a valid transfer, effective at death, by a transferor:

(1) whose last domicile was in Indiana; and

(2) who immediately before death had the power, acting alone, to prevent transfer of the property by revocation or withdrawal and:

(A) use the property for the benefit of the transferor; or

(B) apply the property to discharge claims against the transferor's probate estate.

The term does not include transfer of a survivorship interest in a tenancy by the entireties real estate ~~transfer of a life insurance policy or annuity~~, or payment of the death proceeds of a life insurance policy. ~~or annuity~~.

SECTION 9. IC 12-15-9-0.7, AS ADDED BY P.L.178-2002, SECTION 84, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 0.7. (a) This section applies only to real property owned by the individual at the time of death that was conveyed to the individual's survivor through joint tenancy with right of survivorship.

(b) The office may enforce its claim against ~~any~~ property described in subsection (a). ~~only to the extent that the value of the recipient's combined total interest in all real property described in subsection (a) subject to the claim exceeds one hundred twenty-five thousand dollars (\$125,000).~~

(c) This section expires January 1, 2008.

SECTION 10. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2003]: IC 12-15-8.5-10; IC 12-15-8.5-11.

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SENATE MOTION

Mr. President: I move that Senator Broden be added as coauthor of Senate Bill 331.

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SENATE MOTION

Mr. President: I move that Senator Broden be removed as coauthor of Senate Bill 331.

BRODEN

SENATE MOTION

Mr. President: I move that Senator Kenley be removed as second author of Senate Bill 331.

KENLEY

SENATE MOTION

Mr. President: I move that Senator Broden be added as second author and Senator Kenley be added as coauthors of Senate Bill 331.

MILLER

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COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 331, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between lines 12 and 13, begin a new paragraph and insert:

"(c) A lien obtained under this chapter is subordinate to the security interest of a financial institution that loans money to be used as operating capital for the operation of a farm, a business, or income producing real property."

Page 2, reset in roman line 40.

Page 2, line 41, reset in roman "foreclosure action not later than".

Page 2, line 41, after "months" insert **"seven (7) years"**.

Page 2, line 41, reset in roman "after the Medicaid".

Page 2, reset in roman line 42.

Page 3, delete lines 38 through 42.

Page 4, delete lines 1 through 4.

Page 4, line 33, after "against" insert **"any"**.

Page 4, line 34, after "(a)" insert ".".

Page 4, line 34, strike "only to the extent that the value of the recipient's".

Page 4, strike line 35.

Page 4, line 36, strike "subject to the claim exceeds".

Page 4, line 37, delete "fifty thousand dollars (\$50,000)".

Page 4, delete lines 39 through 40, begin a new paragraph and insert:

"SECTION 9. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2003]: IC 12-15-8.5-10; IC 12-15-8.5-11."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 331 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 1.

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SENATE MOTION

Mr. President: I move that Senate Bill 331 be amended to read as follows:

Page 3, between lines 41 and 42, begin a new paragraph and insert:
 "SECTION 7. IC 12-15-8.5-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 12. (a) A lien under this chapter is void if both of the following occur:**

- (1) The owner of property subject to a lien under this chapter or any person or corporation having an interest in the property, including a mortgagee or a lienholder, provides written notice to the office to file an action to foreclose the lien.**
- (2) The office fails to file an action to foreclose the lien in the county where the property is located not later than thirty (30) days after receiving the notice.**

However, this section does not prevent the claim from being collected as other claims are collected by law.

(b) A person who gives notice under subsection (a)(1) by registered or certified mail to the office at the address given in the recorded statement and notice of intention to hold a lien may file an affidavit of service of the notice to file an action to foreclose the lien with the recorder of the county in which the property is located. The affidavit must state the following:

- (1) The facts of the notice.**
- (2) That more than thirty (30) days have passed since the notice was received by the office.**
- (3) That no action for foreclosure of the lien is pending.**
- (4) That no unsatisfied judgment has been rendered on the lien.**

(c) The recorder shall:

- (1) record the affidavit of service in the miscellaneous record book of the recorder's office; and**
- (2) certify on the face of the record any lien that is fully released.**

When the recorder records the affidavit and certifies the record under this subsection, the real estate described in the lien is released from the lien."

Renumber all SECTIONS consecutively.

(Reference is to HB 331 as printed February 14, 2003.)

KENLEY



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